

ESTTA Tracking number: **ESTTA79907**

Filing date: **05/08/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91166969
Party	Plaintiff Dish D'Lish, Inc.  Dish D'Lish, Inc. 5130 Ballard Ave. NW Seattle, WA 98107 UNITED STATES
Correspondence Address	James L. Vana Perkins Coie LLP 1201 Third Avenue Suite 4800 Seattle, WA 98101 UNITED STATES pctrademarks@perkinscoie.com
Submission	Other Motions/Papers
Filer's Name	James L. Vana
Filer's e-mail	pctrademarks@perkinscoie.com
Signature	/James L. Vana/
Date	05/08/2006
Attachments	Protective Order.pdf ( 7 pages )(218347 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DISH D'LISH, INC.,	X	
	:	
Opposer,	:	Opposition No. 91166969
	:	Serial No. 78/426450
v.	:	
	:	
PAULINE CABOULI,	:	
	:	
Applicant.	:	
	X	

RECEIVED  
TRADEMARK DOCKETING

MAY 01 2006

PERKINS COIE LLP

**STIPULATED PROTECTIVE ORDER**

The parties to this opposition proceeding (individually the "Party," and collectively the "Parties") stipulate to the following Protective Order to apply to documents and information produced or disclosed in this case.

**PROCEDURE AND DEFINITIONS**

**1. Confidential Information**

The Parties or a third-party discovery respondent may designate as "Confidential," by stamping or other appropriate means, any document produced in accordance with the Trademark Rules of Procedure and the Federal Rules of Civil Procedure or by agreement, including, without limitation, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, briefs, affidavits, and declarations (collectively, "Document") containing sensitive proprietary information ("Confidential Information").

## **2. Access To Confidential Information**

Confidential Information so designated, and information derived there from, will not be disclosed to or used by anyone except the following persons, and by these persons solely for purposes of this opposition proceeding:

- a. One designated representative of each of the Parties, to be identified to the other Parties in writing prior to the disclosure of any Confidential Information, who have need for such information for purposes of this opposition proceeding. Once designated, a representative may not be substituted without ten (10) calendar days' advance written notice to the other Party to this action. Within the ten-day period, a party receiving such notice may serve a written notice of objection to such substitution. If, within ten (10) calendar days after service of the objection, the objecting Party moves the Trademark Trial and Appeal Board (the "TTAB") for an order denying substitution of the designated representative, disclosure may not be made until the TTAB rules or the parties agree that such substitution may be made. Failure to timely file such a motion operates as a waiver of the objection;
- b. Counsel for the Parties and their employees involved in the conduct of this opposition proceeding;
- c. Independent experts and consultants retained by any of the Parties who have a need for such information to assist in this opposition proceeding;

- d. During deposition, to any deposition witness where necessary to the testimony of such witness;
- e. The TTAB, TTAB personnel, court reporters, and similar personnel; or
- f. Any other person with the prior written consent of the designating Party.

### **3. Confidential – Attorneys' Eyes Only Information**

The Parties or a third-party discovery respondent also may designate as "Confidential-Attorneys' Eyes Only," by stamping or other appropriate means, any Document containing trade secrets, future marketing plans, customer lists or other such material, that would cause severe competitive damage if it were to be disclosed to another party ("Confidential-Attorneys' Eyes Only Information").

### **4. Access to Confidential – Attorneys' Eyes Only Information**

Confidential – Attorneys' Eyes Only Information so designated, and information derived there from, will be subject to the same protections as provided for Confidential Information as set forth in paragraph 2 above except that, in addition, such Confidential Attorneys' Eyes Only Information may not be shown to or used by any person described in paragraph 2(a) above without prior written consent by the designating Party or to persons within the category described in paragraphs 2(c) and 2(d) above without prior notice to the designating Party under circumstances allowing the designating Party to obtain adequate protection with respect to Confidential – Attorneys' Eyes Only Information either by agreement or by application to the TTAB.

## **5. Time for Making Confidential Designations**

Designation of any Document as "Confidential" or "Confidential – Attorneys' Eyes Only" must be made before a copy of the Document is produced by one Party to another Party. In the case of deposition transcript pages, the designating Party must state on the record that the testimony is "Confidential" or "Confidential-Attorneys' Eyes Only," or must advise opposing counsel of the specific pages to be maintained in confidence within twenty (20) calendar days after receipt of the transcript of the deposition. Inadvertent disclosures of information which the disclosing Party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

## **6. Identification of Experts**

Counsel desiring to disclose Confidential or Confidential – Attorneys' Eyes Only Information to any expert must serve on opposing counsel a copy of a signed undertaking for each expert. Each expert must designate any assistants who would require access to such confidential information.

For a period of ten (10) calendar days after service of the signed undertaking, Confidential or Confidential – Attorneys' Eyes Only Information may not be disclosed to the expert or designated assistants. Within the ten-day period, the producing Party may serve a written notice of objection to disclosure of confidential information to the expert or assistants. If, within ten (10) calendar days after service of the objection, the producing Party moves the TTAB for an order denying disclosure of confidential information to the expert or assistants specified in the notice of objection, disclosure may not be made until the TTAB rules or the Parties agree that such disclosure may be made. Failure to timely file such a motion operates as a waiver of the objection.

## **7. Notification and Challenge**

If any of the Parties challenge the confidentiality designation of any Confidential Information or Confidential – Attorneys' Eyes Only Information, the Party challenging the confidentiality designation may seek appropriate relief from the TTAB upon notice of at least ten (10) calendar days to all interested parties. The Party claiming confidentiality will have the burden of proving that the challenged confidentiality designation is appropriate in the circumstances. All interested Parties will make best efforts to resolve such disagreements as to confidentiality before submitting them to TTAB.

## **8. Effect on Restrictions**

If a motion challenging a confidentiality designation is filed, the provisions of this Protective Order will apply to the Confidential Information or Confidential – Attorneys' Eyes Only Information until the motion is decided.

## **9. Filing Under Seal**

All documents filed with the TTAB that contain Confidential Information or Confidential – Attorneys' Eyes Only Information must be filed under seal and shall bear a legend referring to this consented Protective Order and indicating that the information may not be accessed by anyone other than necessary TTAB personnel without order of the TTAB or written consent of the Parties.

## **10. Return of Documents**

Upon completion of the opposition proceeding and if requested by the producing Party, the original and all copies of all Documents containing Confidential Information or Confidential – Attorneys' Eyes Only Information must be returned to counsel for the producing Party or

destroyed. The non-producing Parties must provide to counsel for the producing Party a certificate reflecting such disposition. The Parties and their counsel will not be required to return any Document that was admitted into evidence at trial or that contains the non-producing party's own privileged communications or attorney work product.

#### **11. Scope of Protective Order**

Nothing in this Protective Order restricts any Party from using or disclosing its own Confidential Information or Confidential-Attorneys' Eyes Only Information for any purpose. This Protective Order also does not apply to information that was lawfully in the possession of a third party or in the public domain before the date of entry of this Protective Order.

#### **12. Retention of Jurisdiction**


The Parties and any other person subject to the terms of this Protective Order agree that the TTAB has and retains jurisdiction during and after this action is terminated for the purpose of enforcing this Order.

#### **13. Application to TTAB**

This Protective Order is without prejudice to the right of any interested party to apply to the TTAB for an order permitting the disclosure of any Confidential Information or Confidential – Attorneys' Eyes Only Information or to apply for an order modifying or limiting this Protective Order in any respect.

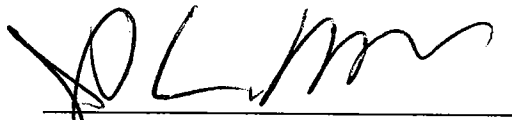
Respectfully submitted,

Date: April 25, 2006

  
Melissa Georges, Esq.  
Frankfurt Kurnit Klein & Selz, PC  
488 Madison Avenue  
New York, NY 10022

Attorneys for Applicant,  
PAULINE CABOULI

Date: 5/8/06

  
James Vana, Esq.  
Perkins Coie LLP  
1201 Third Ave., 40<sup>th</sup> Floor  
Seattle, WA 98101

Attorneys for Opposer,  
DISH D'LISH, INC.